IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 299 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

RAIPUR MFG CO LTD

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 15/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, five questions are referred to us for our opinion in respect of assessment year 1984-85. The questions are

set out hereinafter.

Question No. 1 Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that while considering the disallowance u/s. 40(c), the medical benefits and House Rent Allowance paid to the Managing Directors is not to be considered?

Mr BB Naik, learned counsel for the revenue states that the aforesaid controversy is now concluded by the decisions of this Court in Gujarat Steel Tubes Ltd. vs. CIT, (1994) 210 ITR 358, Ambica Mills Ltd. vs. CIT, (1999) 235 ITR 264 and decision dated 6.2.2001 in Income Tax Reference No. 54 of 1988. In the aforesaid decisions, this Court has taken the view that while considering the disallowance under Section 40(c), reimbursement of medical benefits paid to the Managing Directors is not required to be included, but House Rent Allowance paid to the Managing Directors is required to be included.

In view of the aforesaid decisions, we answer the question in the negative i.e. in favour of the assessee and against the revenue in so far as the reimbursement of medical benefits is concerned, but we answer the question in the affirmative i.e in favour of the revenue and against the assessee in so far as the House Rent Allowance is concerned.

Question No. 2 Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that cash payment of house rent allowance is not to be considered for the purpose of disallowance u/s. 40A(5) of the Act ?

Mr Naik, learned counsel for the revenue states that the aforesaid controversy is also concluded by the decision of this Court in Ambica Mills Ltd. vs. CIT, (1998) 231 ITR 583 and the decision dated 6.2.2001 in Income Tax Reference No. 54 of 1998.

The controversy has been decided in favour of the revenue and we accordingly answer question No. 2 in the negative i.e. in favour of the revenue and against the assessee.

Question No. 3 Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in holding that a deduction u/s. 80VV should be allowed on the total income computed for the purpose of section 80VVA irrespective of the fact that total income computed without applying the provisions of section 80VVA is NIL ?

Although no decision of this Court or any other High Court is brought to our notice as regards this question, in view of the fact that the amount of deduction involved is only Rs.3,750/-, we decline to answer the question in view of smallness of the amount involved.

Question No. 4 Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that while disallowing travelling expenses under Rule 6-D of the I.T. Rules, all the tours undertaken by a person during the year should first be grouped and then limits laid down in Rule 6-D should be applied ?

Mr Naik, learned counsel for the revenue states that the controversy is already concluded in favour of the revenue by the decision of this Court dated 6.2.2001 in Income Tax Reference No. 54 of 1988 wherein we have held that all the tours undertaken by an employee are not to be grouped together and that the limits laid down in Rule 6-D have to be applied with reference to each trip of an individual employee.

We accordingly answer this question in the

negative i.e. in favour of the revenue and against the assessee.

Question No. 5 Whether in law and on facts, the assessee is entitled to allowance of Rs.1,02,124/- paid to Mattur Beardshell Ltd. as `Tabilised' Royalty ?

Mr Naik, learned counsel for the revenue states that this controversy is concluded against the revenue and in favour of the assessee by the decision of this Court in CIT vs. Ashoka Mills Ltd., (1996) 218 ITR 526 wherein this Court has held that payment of royalty by the assessee Company in that case to Mattur Beardshell Ltd. for trade mark `Tabilized' was revenue expenditure.

We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-